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July 3, 2001

Mary L. Cottrell
Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: State Sanitary Code Regulations; D.T.E. 01-21

Dear Secretary Cottrell:

Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, and NSTAR Gas Company (collectively, the "NSTAR Companies") file these reply comments in response to the Rulemaking Order issued by the Department of Telecommunications and Energy (the "Department") on May 25, 2001, initiating a rulemaking proceeding to revise the billing procedures for calculating a residential rental property owner's responsibility in non-minimal use sanitary code violations, as set forth in 220 CMR §§ 29.00 *et seq.* (the "Sanitary Code Billing Regulations"). In these reply comments the NSTAR Companies respond to the initial comments filed in this proceeding and address The Department's request at the public hearing held by the Department on June 26, 2001 for a proposal that includes a billing apportionment between the property owner and tenant for appliance usage related to a sanitary code violation.

Initial comments were filed with the Department by the following parties: the Attorney general of the Commonwealth of Massachusetts (the "Attorney General"); the NSTAR Companies; the Low-Income Energy Affordability Network ("LEAN"); KeySpan energy delivery New England ("KeySpan"); Massachusetts Electric Company and Nantucket electric Company ("Mass. Electric"); and Western Massachusetts Electric Company ("WMECo"). The Department held a public hearing on June 26, 2001.

As an initial matter, the NSTAR Companies reaffirm their position taken in the initial comments that the Department should not change its current Sanitary code Billing Regulations that provide full cost responsibility to a residential rental property owner for a tenant's electric or gas billing in the case of a non-minimal use violation of the Sanitary Code. The Department proposes to revise its regulations to require an apportionment of the billings between the property owner and the tenant based on the usage of the wrongly connected appliance. There is a strong consensus against the Department's proposed change among the commenters, who raised concern with burden that would be placed on utilities under the Department's proposal. Mass. Electric points out that the Department's proposal would put utilities in the position of investigating the facts surrounding the code violation, and may require the expertise of a licensed electrician to inspect the appliances and wiring involved (Mass. Electric Initial Comments at 2). Mass. Electric further notes that determining the usage of the affected appliances is a costly and time-intensive activity that requires specialized training (*id.*). KeySpan also states that the Department's proposal would require time-consuming, detailed and costly investigations to accurately estimate the usage of individual energy consumption sources (KeySpan Initial Comments at 4). WMECo points out that estimating usage can be labor-intensive and time-consuming task (WMECo Initial Comments at 3). LEAN points out that, under the Department's proposal, tenants would be burdened, even though they are not at fault, because, in order to understand the utility company's calculation, tenants would need knowledge of such factors as appliance consumption data, heating degree day data, and billing parameters.

For these reasons, and for the reasons stated in the NSTAR Companies' Initial Comments filed in this proceeding, the NSTAR Companies believe that the public interest is best served by not adopting the Department's proposed revisions to the Sanitary Code Billing Regulations.

Notwithstanding the concerns raised with the Department's proposal, if the Department believes that some apportionment for the retroactive period should be applied between the billings for the property owner and the affected tenant, the NSTAR Companies believe that the apportionment: (i) should be based on citation that provides adequate information to identify the Sanitary Code violation; and (ii) should be calculated using statewide standards for appliance usage established by the Department. Based on these two key elements, the NSTAR Companies propose that upon receipt of a citation of a Code violation: a utility determine whether the violation involves minimal or non-minimal use; if it involves non-minimal use, the utility will determine the property owner's cost responsibility for the retroactive period based on the appliance usage standards established by the Department; and transfer the account for utility service from the tenant to the

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property owner until the Code violation is corrected. If the citation is non-conforming, *i.e.*, the utility cannot ascertain sufficient information to determine the extent of the Code violation, the utility will bill the property owner the full amount of the utility service provided to the tenant for the retroactive period.

This process would reduce the administrative burden on the utilities by making use of a standard form of citation and usage standard established by the Department. Also, if the citation form does not contain sufficient information, the burden will be placed on the property owner to make sure that the utility has a conforming citation. This standardization also will reduce the process necessary for the Department in adjudicating appeals of a utility's apportionment of the cost responsibility.

The NSTAR Companies recommend that the Department utilize a working group to assist in the development of appliance usage standards. The working group could include representatives of the Department, the Division of Energy Resources, the Attorney General, utilities, tenant groups, and landlord groups. A working group also could assist in the development of a standard form of Code citation. That working group could include representative of the parties listed above and also representatives of the Department of Public Health and local certifying agencies.

In conclusion, the NSTAR Companies believe that the Department should not adopt its proposal to revise its Sanitary Code Billing Regulations. However, if the Department determines that some apportionment of billings between the property owner and tenant is necessary, the NSTAR Companies recommend that the Department incorporate into the Sanitary Code Billing Regulations the proposal outlined above. The NSTAR Companies appreciate the opportunity to offer their comments in this proceeding, and will provide any additional information as requested by the Department.

Sincerely,

John Cope-Flanagan

cc: Marcella Hickey, Hearing Officer
Kevin Penders, Legal Department